

justify his intervention as a party in the matter.

(c) When a hearing is held, no communication will be considered in determining the merits of any matter unless it has been received into evidence. The admissibility of any communication shall be governed by the applicable rules of evidence, and no communication shall be admissible on the basis of a stipulation unless Commission counsel as well as counsel for all of the parties shall join in such stipulation.

#### § 1.227 Consolidations.

(a) The Commission, upon motion or upon its own motion, will, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate for hearing:

(1) Any cases which involve the same applicant or involve substantially the same issues, or

(2) Any applications which present conflicting claims, except where a random selection process is used.

(b)(1) In broadcast cases, except as provided in paragraph (b)(5) of this section, and except as otherwise provided in § 1.1601, *et seq.*, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice as the day any one of the previously filed applications is available and ready for processing.

(2) In other than broadcast, common carrier, and safety and special radio services cases, any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the later application in question has been filed within 5 days after public notice has been given in the FEDERAL REGISTER of the Commission's order which first designated for hearing the prior application or applications with which such application is in conflict.

(3) Common carrier cases: (i) *General rule.* Where an application is mutually exclusive with a previously filed appli-

cation, the second application will be entitled to comparative consideration with the first or entitled to be included in a random selection process, only if the second has been properly filed at least one day before the Commission takes action on the first application. Specifically, the later filed application must have been received by the Commission, in a condition acceptable for filing, before the close of business on the day prior to the grant date or designation date of the earlier filed application.

(ii) *Domestic public fixed and public mobile.* See Rule § 21.31 of this chapter for the requirements as to mutually exclusive applications. See also Rule § 21.23 of this chapter for the requirements as to amendments of applications.

(iii) *Public coast stations (Maritime mobile service).* See paragraph (b)(4) of this section.

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act and not subject to competitive bidding procedures pursuant to § 1.2102 of this chapter are filed in the Private Radio Services, or when there are more such applications for initial licenses than can be accommodated on available frequencies. Except for applications filed under part 101, subparts H and O, Private Operational Fixed Microwave Service, and applications for high seas public coast stations (see §§ 80.122(b)(1) (first sentence), 80.357, 80.361, 80.363(a)(2), 80.371(a), (b), and (d), and § 80.374 of this chapter) mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or St. Louis, Missouri for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational

Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. Applications for high seas public coast stations will be processed on a first come, first served basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applications. Applications for high seas public coast stations received on the same day will be treated as simultaneously filed and, if granting more than one would result in harmful interference, must be resolved through settlement or technical amendment.

(5) Any mutually exclusive application filed after the date prescribed in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section will be dismissed without prejudice and will be eligible for re-filing only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

[28 FR 12425, Nov. 22, 1963, as amended at 34 FR 7966, May 21, 1969; 37 FR 13983, July 15, 1972; 38 FR 26202, Sept. 19, 1973; 48 FR 27200, June 13, 1983; 48 FR 34039, July 27, 1983; 52 FR 10229, Mar. 31, 1987; 55 FR 46008, Oct. 31, 1990; 55 FR 46513, Nov. 5, 1990; 61 FR 18291, Apr. 25, 1996; 67 FR 34851, May 16, 2002; 67 FR 48563, July 25, 2002; 73 FR 9018, Feb. 19, 2008; 76 FR 70908, Nov. 16, 2011]

**§ 1.229 Motions to enlarge, change, or delete issues.**

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the FEDERAL REGISTER.

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (See § 1.223 of this part).

(2) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, such motions shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to § 1.221(h), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (See § 1.223).

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2) of this section shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

(c) In the absence of good cause for late filing of a motion to modify the issues, the motion to enlarge will be considered fully on its merits if (and only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting